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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No.

JOSEPH LAWSON, JR., and CORRINE LAWSON,

Respondents,

vs.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic, and CECIL A. FISHER, MRS. HENRY E. GUNDERSON, PETER T. SCHOEMANN, HAROLD HOLAND and J. MARTIN KLOTSCHE, individually and as Commissioners of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, and RICHARD W. E. PERRIN, individually and as Executive Director of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,

Petitioners.

TRANSCRIPT OF RECORD

(Consisting of Appendix in Courts Below)

STATE OF WISCONSIN MILWAUKEE COUNTY

CIRCUIT COURT

JOSEPH LAWSON, JR., and
CORRINE LAWSON,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a Municipal Corporation, and CECIL A. FISHER, MRS. HENRY E. GUNDERSON, PETER T. SCHOEMANN, HAROLD HOLAND, and J. MARTIN KLOTSCHE, individually and as Commissioners of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, and RICHARD W. E. PERRIN, individually, and as Executive Director of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,

Defendants.

AMENDED COMPLAINT

verified September 18, 1953

(only pertinent portions are printed)

* * * * *

1. This is an action for declaratory judgment pursuant to Wisconsin Statutes, Sec. 269.56.

2. Plaintiffs are husband and wife and are residents of the City of Milwaukee and lessees and occupants together with their three infant children of an apartment in the Hillside Terrace Housing Project, a federally-aided low rent project operated, managed and administered by defendant, Housing Authority of the City of Milwaukee, pursuant to the Wisconsin Housing Authorities Act of 1935 as amended (Wisconsin Statutes, Sec. 66.40-66.404 (1951)).

3. Defendant, Housing Authority of the City of Milwaukee, hereinafter designated as the "Authority" is a Municipal Corporation administering its various administrative and executive departments and the housing projects, pursuant to the Wisconsin Housing Authorities Act and other statutes of the State of Wisconsin and in accordance with certain by-laws, regulations and resolutions adopted for and on behalf of the Authority by its Commissioners.

4. Defendant, Cecil A. Fisher, is chairman and a Commissioner of the Authority and the defendants, Mrs. Henry E. Gunderson, Peter T. Schoemann, Harold Holand and J. Martin Klotsche are Commissioners of the Authority. Said Commissioners are charged with the duty of directing the operations of the Authority and of directing the activity of its officers and agents and employees; Richard W. E. Perrin is the Executive Director of the Authority.

5. Defendant, Housing Authority of the City of Milwaukee, owns, operates, and manages and administers low rent housing projects, among them, Hillside Terrace Housing Project, with the aid of federal financial assistance.

6. The Independent Offices Appropriations Act of 1953 (Public Law, 455-82 Cong.), approved July 5, 1952, contains a proviso, commonly known as the "Gwinn Amendment", which reads as follows:

"Provided further, That no housing unit constructed under the United States Housing Act of 1937, as amended, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General; *Provided further,* That the foregoing prohibition shall be enforced by the local housing authority and

that such prohibition shall not impair or affect the powers or obligations of the Public Housing Administration with respect to the making of loans and annual contributions under the United States Housing Act of 1937, as amended."

7. On or about December 9, 1952, pursuant to said "Gwinn Amendment", the said Commissioners of the Authority duly adopted a resolution (Resolution No. 513) amending the regulations governing the administration of federally-aided low rent projects owned by the Authority or leased by the Authority from the Federal Government, to add non-membership in any organization designated as subversive by the Attorney General of the United States as a condition of eligibility for continued occupancy; to require lease holders to execute a certificate of non-membership in said listed organizations; to require inclusion in tenants' leases of a rider containing a covenant against membership in such organizations; and to require prompt evictions of families including any person who is a member of such organization. Said Commissioners have made it a condition of continued occupancy that the plaintiffs execute a certificate, a copy of which is attached hereto as Exhibit "A" and made a part hereof as if set forth in full; as to any projects which are owned, managed, or administered by the Authority without federal financial assistance, no such resolution or regulation has been enacted by said Commissioners.

8. On or about the 6th day of July, 1953, plaintiffs received a letter from the defendant, Housing Authority of the City of Milwaukee, advising them that they would be evicted if they did not comply with the requirements of the aforesaid certificate. A copy of said letter is attached as Exhibit "B" and made a part hereof, as if set

forth in full herein. With said letter, plaintiffs also received a copy of the certificate to be executed by them, which is Exhibit "A" attached hereto, and a copy of said Attorney General's list of organizations which is attached hereto as Exhibit "C" and made a part hereof as if set forth in full herein.

9. On or about the 23rd day of July, 1953, the defendant Housing Authority of the City of Milwaukee by its agent served upon the plaintiff Corrine Lawson a "Thirty day" notice that tenancy by the plaintiffs of their dwelling in the Hillside Terrace Housing Project was terminated "upon the expiration of the 31st day of August, 1953;" the plaintiffs continue to occupy said premises hereinabove referred to.

10. On or about the 1st day of September, 1953, and again on or about the 3rd day of September, 1953, the plaintiffs tendered to the defendant Housing Authority of the City of Milwaukee rent on the premises occupied by said plaintiffs; and on or about September 1, and September 3, 1953, the defendant Housing Authority of the City of Milwaukee refused and returned said tender of rent to the plaintiffs, notified said plaintiffs that it will not accept further rent and reminded them to vacate in accordance with the terms of the notice.

11. The plaintiffs herein at all times have paid rent on the premises hereinabove referred to and occupied by them and will continue to tender and to offer to pay such rent as may become due on said premises.

12. Wisconsin Statutes, Sec. 66.402 sets forth the criteria for the selection of tenants by the Authority. Neither this section nor any other section of the Wisconsin Housing Authorities Act or any other statute of the State of Wisconsin confers upon the Authority or its Com-

missioners the authority and power to pass the aforesaid resolution of December 9, 1952; or to administer and enforce it; or to condition plaintiffs' occupancy on non-membership of plaintiffs or of any member of their respective families in any organization listed by the Attorney General of the United States; or to evict occupants by virtue of their membership or by virtue of the membership of any member of their family, in any organization listed by the Attorney General of the United States; or to require occupants to execute a certificate of non-membership in organizations so listed; or to require inclusion in Tenants Leases of a covenant against membership in such organizations; or to evict families containing any person who is a member of such organization. Said resolution is void, is in violation of Article IV, Section 1 of the Constitution of the State of Wisconsin, and the actions of said Commissioners in enforcing said resolutions are taken without authority of law.

13. The Gwinn Amendment is not mandatory, with respect to existing properties operated or administered by the Housing Authority of the City of Milwaukee, and in any event cannot confer upon the defendants authority and power to enact resolutions which they are not empowered or authorized to enact by virtue of the laws of the State of Wisconsin. The Gwinn Amendment neither empowers nor authorizes the Authority to adopt the aforesaid resolution of December 9, 1952; or to administer and enforce it; or to evict occupants by virtue of their membership, or membership of any member of the family in any organization listed by the Attorney General of the United States; or to require occupants to execute a certificate of their non-membership, and of non-membership of every member of their family in organizations listed by the Attorney General of the United States; or to re-

quire inclusion in Tenants Leases of a covenant against such membership in such organizations; or to evict families found to contain any person who is a member of such organization.

14. The Gwinn Amendment, the resolution and regulation of the Authority of December 9, 1952, and the enforcement of said resolution by the Housing Authority of the City of Milwaukee in requiring certificates of non-membership in organizations listed by the Attorney General from each of the tenants in federally financed projects are void, illegal and unconstitutional for the following reasons:

(a) The Gwinn Amendment, together with said resolution proscribes organizations to which persons may not belong, under pain of punishment, in violation of the powers reserved to the people by Amendment IX of the Constitution of the United States and reserved to the States by Amendment X to the Constitution of the United States, and in derogation of the rights of free speech and free assembly guaranteed against restraint or abridgment by the First Amendment to the Constitution of the United States and Article 1, Sec. 3 of the State of Wisconsin.

(b) The Gwinn Amendment does not distinguish between knowing and innocent membership in organizations designated as subversive by the Attorney General but conclusively determines the eligibility of otherwise qualified families for occupancy in public housing projects, and therefore violates due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(c) Said resolution and the certificate of non-membership in organizations listed by the Attorney General required by said resolution to be executed by the plaintiffs,

does not distinguish between knowing and innocent membership in said organizations but conclusively determines the eligibility of otherwise qualified families for occupancy in public housing projects, and therefore violates due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States.

(d) The Gwinn Amendment, together with the said resolution proscribes organizations to which persons may not belong under penalty of punishment, conclusively determines the nature, rights, character and status of said organizations, and the eligibility of plaintiffs for occupancy of their apartments, without notice, either to said organizations, to their members, or to the plaintiffs, and without hearing, and without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

(e) The Attorney General's list of organizations as here used by virtue of the Gwinn Amendment and of the aforesaid resolution is illegal and unconstitutional for lack of due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States because (i) the organizations on said list were placed thereon by the Attorney General without prior notice or hearing either to said organizations or to members thereof, or to the plaintiffs; (ii) the standards followed by the Attorney General in determining whether or not to place organizations in the proscribed list are vague and indefinite, and inappropriate for the use made of said list by the Gwinn Amendment and said resolution; and (iii) the Attorney General's list as used here conclusively determines the rights of the plaintiffs to occupy public housing projects in contrast with its use in the federal employees loyalty program where it at most establishes a rebuttable presumption.

(f) By enforcing said resolution in federally-aided projects managed, administered and operated by the Authority and by not enforcing said resolution in projects operated, managed and administered by the Authority without financial assistance from the Federal Government, defendants deny to plaintiffs equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

(g) The Gwinn Amendment is a bill of attainder, contrary to Section 9 of Article 1 of the Constitution of the United States, destroys the presumption of innocence, and deprives persons of their property and liberty without due process of law, contrary to the Fifth Amendment to the Constitution of the United States, and abridges the right of the people peaceably to assemble and to speak freely, contrary to the First Amendment to the Constitution of the United States.

(h) Said resolution of the Authority, and the enforcement thereof, denies plaintiffs equal protection of the law, deprives them of their liberty and property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and is a bill of attainder contrary to Section 10 of Article 1 of the Constitution of the United States, and Section 12 of Article 1 of the Constitution of the State of Wisconsin.

15. Plaintiffs have refused and will refuse to execute the aforesaid certificates and amendments to their leases.

16. Unless an injunction is issued by this Court *pendente lite* restraining the defendants from enforcing the aforesaid resolution, irreparable injury and damage will be done to the plaintiffs and plaintiffs will be evicted from said housing accommodation. No injury will result to the defendants from the issuance of said temporary injunction.

17. Contrary to the contentions of the plaintiffs set forth above, defendants claim, upon plaintiff's information and belief, that they are empowered and authorized to enact and enforce the aforesaid resolution to require the aforesaid certificates and amendments to leases, and to evict tenants failing to comply with said resolution, and that the Gwinn Amendment, said resolution, and the enforcement thereof do not violate any provisions of the Wisconsin and the United States Constitutions. The claim of defendants presents a case of actual controversy.

* * * * *

Exhibit "A".

Housing Authority of the City of Milwaukee.
Certificate of Non-Membership in Subversive Organizations.*

I hereby certify that I am not a member of any of the organizations listed in the document entitled "Consolidated List, Dated November 10, 1952, of Organizations Designated by the Attorney General of the United States As Within Executive Order No. 9835", and that, to the best of my knowledge, information, and belief, no person who is to occupy the housing accommodations in connec-

* Important Note: The United States Code, Title 18 (Crimes and a Criminal Procedure), Section 1001, makes it a criminal offense to make a willfully false statement or representation concerning any matter within the jurisdiction of any department or agency of the United States.

tion with which this certificate is furnished (that is, the accommodations for which I am making, or have made, application) is a member of any such organization. I hereby further certify that I have carefully read the document referred to in the preceding sentence.**

Witness:

....

*Signature

.....

Date

Exhibit "B".

Housing Authority of the City of Milwaukee.

To All Residents:

The Congress of the United States has stipulated that the Housing Authority may not accept as tenants, any family, a member of which is a member of a subversive organization, as listed by the United States Attorney General. The Milwaukee Housing Authority, therefore, must obtain a certified statement from you, signed by the head of the family, attesting to the fact that neither he or she nor any member of the family is at present time a member of a subversive organization. A list of the subversive organizations, so judged by the Attorney General, is made available to you.

** In the case of persons unable to read, the words "carefully read" in the second sentence of the certificate may be stricken out and the words "had read to me" substituted.

Therefore, you will please review the attached list, and if not a member of any organizations, you are to certify to that effect through signing of the attached certification, properly witnessed by someone not a member of the immediate family.

This certification is to be returned, properly signed, within 5 days.

Exhibit "C".

38 HOUSING AUTHORITY OF THE CITY OF MILWAUKEE.

Consolidated List, Dated November 10, 1952, of Organizations Designated by the Attorney General of the United States as within Executive Order No. 9835.

Abraham Lincoln Brigade
Abraham Lincoln School, Chicago, Illinois
Action Committee to Free Spain Now
Alabama Peoples Educational Association
American Association for Reconstruction in Yugoslavia, Inc.
American Branch of the Federation of Greek Maritime Unions
American Christian Nationalist Party
American Committee for European Workers' Relief
American Committee for Protection of Foreign Born
American Committee for Spanish Freedom
American Committee for Yugoslav Relief, Inc.
American Council for a Democratic Greece, formerly known as the Greek American Council; Greek American Committee for National Unity
American Council on Soviet Relations
American Croatian Congress
American Jewish Labor Council
American League Against War and Fascism
American League for Peace and Democracy
American Nationalist Party
American National Labor Party
American National Socialist League
American National Socialist Party
American Patriots, Inc.
American Peace Mobilization
American Polish Labor Council
American Rescue Ship Mission (a project of the United American Spanish Aid Committee)
American-Russian Fraternal Society
American Russian Institute, New York (also known as the American-Russian Institute for Cultural Relations with the Soviet Union)
American Russian Institute, Philadelphia
American Russian Institute (of San Francisco)
American Russian Institute of Southern California, Los Angeles
American Slav Congress
American Youth Congress
American Youth for Democracy
Armenian Progressive League of America
Associated Klans of America
Association of Georgia Klans
Association of German Nationals (Reichsdeutsche Vereinigung)
Ausland-Organization der NSDAP, Overseas Branch of Nazi Party
Black Dragon Society
Boston School for Marxist Studies, Boston, Massachusetts
California Labor School, Inc., 216 Market Street, San Francisco, California
Carpatho-Russian Peoples Society
Central Council of American Women of Croatian Descent, aka Central Council of American Croatian Women, National Council of Croatian Women
Central Japanese Association (Beikoku Chuo Nipponjin Kai)
Central Japanese Association of Southern California
Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront)
Cervantes Fraternal Society
Citizens Committee to Free Earl Browder
Citizens Committee for Harry Bridges
Citizens Committee of the Upper West Side (New York City)
Citizens Protective League
Civil Rights Congress and its affiliated organizations
Civil Rights Congress for Texas
Columbians
Comite Coordinador Pro Republica Espanola
Committee to Aid the Fighting South
Committee for a Democratic Far Eastern Policy
Committee for Nationalist Action
Commonwealth College, Mena, Arkansas
Communist Party, U. S. A., its subdivisions, subsidiaries and affiliates
Communist Political Association, its subdivisions, subsidiaries and affiliates
Connecticut State Youth Conference
Congress of American Revolutionary Writers
Congress of American Women
Council on African Affairs
Council for Pan-American Democracy
Croatian Benevolent Fraternity
Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan)
Daily Worker Press Club
Dante Alighieri Society
Dennis Defense Committee
Detroit Youth Assembly
Emergency Conference to Save Spanish Refugees (founding body of the North American Spanish Aid Committee)
Federation of Italian War Veterans in the U. S. A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America)
Finnish-American Mutual Aid Society
Florida Press and Educational League
Friends of the New Germany (Freunde des Neuen Deutschlands)
Friends of the Soviet Union
Garibaldi American Fraternal Society
George Washington Carver School, New York City
German-American Bund (Amerikadeutscher Volksbund)
German-American Republican League
German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft)
Hawaii Civil Liberties Committee
Heimuska Kai, also known as Nokubei Heleki Gimusha Kai, Zaibei Nihonjin, Heiyaku Gimusha Kai, and Zaibei Heimusha Kai (Japanese Residing in America Military Conscripts Association)
Hellenic-American Brotherhood
Hinode Kai (Imperial Japanese Reservists)

Hinomaru Kai (Rising Sun Flag Society, a group of Japanese War Veterans)
Hokubei Zaigo Shoke Dan (North American Reserve Officers Association)
Hollywood Writers Mobilization for Defense
Hungarian-American Council for Democracy
Hungarian Brotherhood
Independent Socialist League
Industrial Workers of the World
International Labor Defense
International Workers Order, its subdivisions, subsidiaries and affiliates
Japanese Association of America
Japanese Overseas Central Society (Kaigai Dobo Chuo Kai)
Japanese Overseas Convention, Tokyo, Japan, 1940
Japanese Protective Association (Recruiting Organization)
Jefferson School of Social Science, New York City
Jewish Peoples Committee
Jewish Peoples Fraternal Order
Jikyoku Iinkai (The Committee for the Crisis)
Joint Anti-Fascist Refugee Committee
Joseph Weydemeyer School of Social Science, St. Louis, Missouri
Kibei Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan)
Knights of the White Camelia
Ku Klux Klan
Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund), Kyffhauser Fellowship (Kyffhaeuser Kameradschaft)
Kyffhaeuser War Relief (Kyffhaeuser Kriegshilfswerk)
Labor Research Association, Inc.
Labor Youth League
League of American Writers
Lictor Society (Italian Black Shirts)
Macedonian-American People's League
Mario Morgantini Circle
Michigan Civil Rights Federation
Michigan School of Social Science
Nanka Teikoku Cunyudan (Imperial Military Friends Group or Southern California War Veterans)
Nationalist Action League
National Blue Star Mothers of America (Not to be confused with the Blue Star Mothers of America organized in February 1942)
National Committee for the Defense of Political Prisoners
National Committee to Win the Peace
National Conference on American Policy in China and the Far East (a Conference called by the Committee for a Democratic Far Eastern Policy)
National Council of Americans of Croatian Descent
National Council of American-Soviet Friendship
National Federation for Constitutional Liberties
National Negro Congress
Nationalist Party of Puerto Rico
Nature Friends of America (since 1935)
Negro Labor Victory Committee
New Committee for Publications
Nichibei Kogyo Kaisha (The Great Fujii Theatre)
North American Committee to Aid Spanish Democracy
North American Spanish Aid Committee
Northwest Japanese Association
Ohio School of Social Sciences
Oklahoma Committee to Defend Political Prisoners
Oklahoma League for Political Education
Original Southern Klans, Incorporated
Pacific Northwest Labor School, Seattle, Washington
Partido del Pueblo of Panama (operating in the Canal Zone)
Peace Movement of Ethiopia
Peoples Educational Association (Incorporated under name Los Angeles Educational Association, Inc.) aka Peoples Educational Center, Peoples University, People's School
Peoples Educational and Press Association of Texas.
People's Institute of Applied Religion
People's Radio Foundation, Inc.
Philadelphia School of Social Science and Art
Photo League (New York City)
Polonia Society of the IWO
Progressive German-Americans, aka Progressive German-Americans of Chicago
Proletarian Party of America
Protestant War Veterans of the United States, Inc.
Revolutionary Workers League
Romanian-American Fraternal Society
Sakura Kai (Patriotic Society, or Cherry Association—composed of veterans of Russo-Japanese War)
Samuel Adams School, Boston, Massachusetts
Schappes Defense Committee
Schneiderman-Darcy Defense Committee
School of Jewish Studies, New York City
Seattle Labor School, Seattle, Washington
Serbian-American Fraternal Society
Serbian Vidovdan Council
Shinto Temples
Silver Shirt Legion of America
Slovak Workers Society
Slovenian-American National Council
Socialist Workers Party, including American Committee for European Workers' Relief
Socialist Youth League
Sokoku Kai (Fatherland Society)
Southern Negro Youth Congress
Suiko Sha (Reserve Officers Association, Los Angeles)
Tom Paine School of Social Science, Philadelphia, Pennsylvania
Tom Paine School of Westchester, New York
Ukrainian-American Fraternal Union
Union of American Croatians
United American Spanish Aid Committee
United Committee of South Slavic Americans
United Harlem Tenants and Consumers Organization
United May Day Committee
United Negro and Allied Veterans of America
Veterans of the Abraham Lincoln Brigade
Veterans Against Discrimination of Civil Rights Congress of New York
Virginia League of Peoples Education
Walt Whitman School of Social Science, Newark, New Jersey
Washington Bookshop Association
Washington Committee for Democratic Action
Washington Commonwealth Federation
Wisconsin Conference on Social Legislation
Workers Alliance (Since April 1936)
Workers Party, including Socialist Youth League
Yiddisher Kultur Farband
Young Communist League

DEMURRER OF DEFENDANTS TO AMENDED COMPLAINT

verified September 18, 1953 *(omitting formal parts)*

That it appears upon the face of the complaint:

That the same does not state facts sufficient to constitute a cause of action.

Dated at Milwaukee, Wisconsin, this *8th* day of October, 1953.

DECISION ON DEMURRER TO AMENDED COMPLAINT

verified September 18, 1953 *(omitting formal parts)*

Defendants have interposed a general demurrer to plaintiffs' amended complaint and specified as ground that it appears upon the face of the complaint that the same does not state facts sufficient to constitute a cause of action.

Plaintiffs bring this action for declaratory judgment under Section 269.56 of the Wisconsin Statutes. Plaintiffs are husband and wife and tenants of the defendant, Housing Authority of the City of Milwaukee in Hillside Terrace Housing Project, a federally aided low rent housing project, operated, managed and administered by the defendant, Housing Authority of the City of Milwaukee pursuant to the Wisconsin Housing Authorities Act; section 66.40-66.404, Wisconsin stats.

The Independent Offices Appropriation Act of 1953 (Public Law, 455-82 Cong.), approved July 5, 1952, contains the following provision, known as the Gwinn Amendment:

"Provided further, that no housing unit constructed under the United States Housing Act of 1937, as amended shall be occupied by a person who is a member of an or-

ganization designated as subversive by the Attorney General; Provided further, that the foregoing prohibition shall be enforced by the local housing authority, and that such prohibition shall not impair or affect the powers or obligations of the Public Housing Administration with respect to the making of loans and annual contributions under the United States Housing Act of 1937, as amended."

On December 9, 1952, the Commissioners of the Housing Authority adopted Resolution No. 513. This Resolution provided in effect that occupancy in federal aided low rent housing projects operated by the defendant was to be conditioned upon the tenant certifying that he is not a member of any of the organizations designated by the Attorney General as subversive. The certificate required to be signed by the tenant reads as follows:

"Housing Authority of the City of Milwaukee Certification of non-Membership in Subversive Organizations.

"I hereby certify that I am not a member of any of the organizations listed in the document entitled "Consolidated list, Dated, November 10, 1952, of Organizations Designated by the Attorney General of the United States As Within Executive Order No. 9835', and that, to the best of my knowledge, information, belief, no person who is to occupy the housing accommodations in connection with which this certificate is furnished (that is, the accommodations for which I am making or have made, application) is a member of any such organization. I hereby certify that I have carefully read the document referred to the preceding sentence."

Witness: .....

Date..... Signature.....

Plaintiffs bring this action for declaratory judgment in accordance with Section 269.56, Wisconsin statutes, to declare Resolution 513 invalid and unconstitutional, violative of Section 1, Article IV of the Constitution of the State of Wisconsin and Sections 3 and 12 of Article I of the Constitution of the State of Wisconsin and of Section 10 of Article I of the Constitution of the United States and in violation of the First and Fourteenth Amendments of the Constitution of the United States and to declare the Gwinn Amendment unconstitutional in violation of Section 9 of Article I of the Constitution of the United States and in violation of the Ninth and Tenth Amendments of the Constitution of the United States.

The complaint fails to allege membership on the part of either plaintiff in any organization listed by the Attorney General as subversive.

Defendants contend that plaintiffs have no standing to sue until it is made to appear by the complaint that they are members of one of the organizations listed by the Attorney General as subversive pursuant to Executive Order and that, therefore, their rights would be prejudiced under the Gwinn Amendment or Resolution 513 of the Housing Authority. It is a well settled doctrine that the Court will entertain an action only if "the controversy is justiciable".

In *Joint Anti-Fascist Refugee Comm. v. McGrath,* Mr. Justice Frankfurter, in a concurring opinion, discussing this subject, stated:

"A litigant must show more than that he 'suffers in some indefinite way in common with people generally'. (*Frothingham v. Mellon,* 262 U. S. at 488) * * *.

In seeking to determine whether in the case before us the standards they reflect are met, therefore, we must go

to the decisions. They show that the existence of 'legal' injury has turned on the answer to one or more of these questions: (a) Will the action challenged at any time substantially affect the 'legal' interests of any person? (b) Does the action challenged affect the petitioner with sufficient directness'? (c) Is the action challenged sufficiently 'final'?"

In *Skowron v. Skowron,* 259 Wis., 17, interpreting the declaratory judgment statute, the Court said:

"Jurisdiction to enter declaratory judgments is given the court by sec. 269.56 stats. Read literally, the subsections (2) and (2) thereof seem to require courts to give advisory opinions in any question concerning a contract, but before the law was enacted in Wisconsin other states had enacted and construed it, as the Uniform Declaratory Judgment Act, which constructions come with it into our own jurisprudence. Since its enactment in this state in 1927, this court also has often construed it and it is well settled that the act does not compel or permit the courts to give advisory opinion and they properly refuse judgments unless the pleadings present a justiciable controversy ripe for judicial determination. The statute deals with present rights only. Courts will not declare rights until they have become fixed under an existing state of facts nor will they determine future rights in anticipation of an event that may never happen. *Heller v. Shapiro* (1932), 208 Wis., 310, 241 N.W. 174; *Sun Prairie v. Wis. Power & Light Co.,* (1933) 213 Wis., 277; 251 N.W. 605."

In *United Public Workers v. Mitchell,* 330 U. S., 75 (1947) the Court said:

"The power of courts, and ultimately of this court, to pass upon the constitutionality of acts of Congress arises

only when the litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. * * * Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants."

To the same effect is *Long v. Somervell,* 175 Misc. 119, 22 N. Y. S. 2d, 931 (Affirmed 261 App. Div. 946; 27 N. Y. S. 2d, 445 (1940)).

I am of the opinion that unless it is made to appear by the complaint that either of the plaintiffs is a member of an organization upon the proscribed list of the Attorney General that it cannot be said that the Gwinn Amendment or Resolution 513 "directly" affects the legal interest of plaintiffs and that they do not affect plaintiffs with sufficient "directness" and it must be held that the complaint does not present a justiciable question unless it is made to appear by express allegation that plaintiffs are members of an organization declared to be subversive by the Attorney General. In other words, it must be held that plaintiffs have no capacity to sue until such fact is made to appear by appropriate allegation in the complaint.

Because of this view, it becomes unnecessary to consider at this time objections urged by plaintiffs with respect to the constitutionality of the Gwinn Amendment and Resolution 513.

The demurrer of defendants to the amended complaint of plaintiffs is therefore sustained, with leave to plaintiffs to file an amended complaint within twenty days.

Dated, December 30, 1953.

/s/ Otto H. Breidenbach,
Circuit Judge.

AMENDED COMPLAINT
verified January 18, 1954

Note: This amended complaint is identical in text with the amended complaint verified September 18, 1953, except for the insertion as paragraph 8 in the second amended complaint of the following:

8. Plaintiff Corrine Lawson is and was, at all times herein pertinent, a member of one of the organizations designated as subvervise by the Attorney General of the United States.

(Paragraphs 8, 9, 10, 11 and so on in first amended complaint are paragraphs 9, 10, 11, 12, and so on, respectively, in second amended complaint.)

DEMURRER TO AMENDED COMPLAINT
verified January 18, 1954

(omitting formal parts)

That it appears upon the face of the amended complaint:

That the same does not state facts sufficient to constitute a cause of action.

Dated at Milwaukee, Wisconsin this 21st day of January, 1954.

DECISION OF CIRCUIT COURT OF MILWAUKEE COUNTY
The Honorable William F. Shaughnessy, Presiding

(Unreported) (Omitting Formal Parts)

This is an action for declaratory judgment instituted by the plaintiffs as lessees and occupants of an apartment in the Hillside Terrace Housing Project, admittedly a federally-aided low rent project managed and administered by the Housing Authority of the City of Milwaukee pur-

suant to Sections 66.40-66.404 of 1951, Wisconsin Statutes. The defendants demur to the amended complaint filed upon the ground that the same does not state facts sufficient to constitute a cause of action.

The amended complaint so challenged by demurrer recites that the plaintiff Corrine Lawson is and was, at all times herein pertinent, a member of one of the organizations designated as subversive by the Attorney General of the United States, and also alleges that the defendant Commissioners adopted a resolution pursuant to the so-called "Gwinn Amendment" (Public Law 455-82 Congress, approved July 5, 1952) providing that leaseholders, including the plaintiffs, must execute a certificate of non-membership in organizations listed as subversive by the Attorney General, and further providing for inclusion in tenants' leases of a rider containing a covenant against membership in such organizations. The plaintiffs claim that the Gwinn Amendment itself and also the resolution and regulation of the defendant Authority requiring certificates of non-membership in organizations listed by the Attorney General from tenants in federally financed projects, are void, illegal and unconstitutional, and that the plaintiffs have refused and will refuse to execute the aforesaid certificates and amendments to their leases.

The court has concluded that the demurrer to the amended complaint must be sustained, and decides as a matter of law that the action by the defendant Housing Authority is valid and that the legislation upon which that action was based cannot be considered as violative of any constitutional inhibition. *Rudder v. United States,* Municipal Court of Appeal, District of Columbia, 105 Atlantic 2nd, 741.

Consideration of the contents of the amended complaint impels the further conclusion that judgment be entered in favor of the defendants and against the plaintiffs without prolonging the litigation by permission to further amend the pleading.

An order for judgment consistent with the foregoing decision may be prepared and submitted.

By the Court:

/s/ William F. Shaughnessy,
Circuit Judge.

Dated: October 7, 1954.

ORDER GRANTING JUDGMENT FOR DEFENDANTS

(Omitting Formal Parts)

It is ordered:

1. Defendants' demurrer to amended complaint upon the ground that the same does not state facts sufficient to constitute a cause of action be and hereby is sustained without leave to plaintiffs to further amend the amended complaint;

2. That judgment is granted in favor of the defendants dismissing this action;

3. That defendants recover their taxable costs and disbursements, including $50.00 attorney's fee.

Dated at Milwaukee, Wisconsin, this 8th day of October, 1954.

By the Court:

/s/ William F. Shaughnessy,
Circuit Judge.

JUDGMENT

(Omitting Formal Parts)

Now, therefore, it is ordered, adjudged and decreed:

1. That defendants' demurrer to the amended complaint upon the ground that the same does not state facts sufficient to constitute a cause of action be and hereby is sustained without leave to plaintiffs to further amend the amended complaint;

2. That judgment is granted in the above entitled action in favor of the defendants and against the plaintiffs; that the above entitled action and the complaints herein are dismissed upon the merits;

3. That defendants recover of the plaintiffs the sum of $50.00 attorney's fees.

Dated at Milwaukee, Wisconsin, this 20th day of October, 1954 at 9:05 A. M.

By the Court.

DECISION OF SUPREME COURT OF THE STATE OF WISCONSIN

Dated June 1, 1955,

Reported in 270 Wis. 269, 70 N.W. (2d) 605.

No. 259

August Term, 1954

State Of Wisconsin : : In Supreme Court

JOSEPH LAWSON, JR., et al.,

Appellants,

v.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a municipal corporation et al.,

Respondents.

APPEAL from a judgment of the circuit court for Milwaukee county: William F. Shaughnessy, Circuit Judge. *Reversed.*

Action by the plaintiffs Joseph Lawson, Jr., and Corrine Lawson against the defendant Housing Authority of the city of Milwaukee (hereinafter referred to as the "Authority"), and certain individuals who are commissioners or officers of the Authority, for a declaratory judgment adjudicating that a certain resolution adopted by the Authority is invalid and unconstitutional.

The facts hereinafter stated are contained in the allegations of the plaintiffs' amended complaint.

Plaintiffs, husband and wife, together with three infant children, are lessees and occupants of an apartment in a

federally aided low rent project administered by defendant, Housing Authority. The Authority is a municipal corporation administering, among other things, the housing projects, pursuant to the Wisconsin statutes and in accordance with certain by-laws, regulations and resolutions adopted on behalf of the Authority by its commissioners, who are also defendants. The Hillside Terrace Housing project in the city of Milwaukee, where plaintiffs reside, is administered by the Authority with the aid of federal financial assistance. A proviso of the Independent Offices Appropriations Act of 1953 (Public Law, 455-82 Cong. 66 Stat. 403, 42 U. S. C. A.1411 (c)), approved July 5, 1952, commonly known as the "Gwinn Amendment", provides that no housing unit constructed with federal funds shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General. On December 9, 1952, pursuant to the Gwinn Amendment, the commissioners of the Authority adopted Resolution 513 which provided for non-membership in any organization designated as subversive by the Attorney General of the United States as a condition of eligibility for continued occupancy. Leaseholders were required to execute a certificate of non-membership in the listed organizations. The resolution also required the inclusion in tenants' leases of a rider containing a covenant against membership in such organizations, and further required prompt eviction of families which included any person who was a member of such organization.

On July 6, 1953 plaintiffs were informed by letter by the Authority that they would be evicted if they did not comply with the requirements of the certificate. Received with the letter by the plaintiffs was a copy of the certificate to be executed by them and a list of organizations

designated by the Attorney General as subversive. The plaintiff Corrine Lawson then was, and is now, a member of one of such organizations designated by the Attorney General as being subversive. On July 23, 1953, the Housing Authorities served upon one of the plaintiffs a thirty day notice of termination of tenancy. On September 1 and 3, 1953, the plaintiffs tendered rent to the Authority for the premises occupied by them, but said rent was refused and returned to the plaintiffs, and they were notified by the Authority that it would not accept further rent. Plaintiffs were reminded to vacate in accordance with the terms of the notice.

The amended complaint alleges that both Resolution 513 of the Authority and the Gwinn Amendment are invalid and unconstitutional for reasons that will be discussed in the opinion.

The defendants demurred to the amended complaint on the ground that it does not state facts sufficient to constitute a cause of action. The trial court under date of October 20, 1954, entered a judgment which sustained the demurrer without leave to plead over, and dismissed the action upon the merits. From such judgment the plaintiffs have appealed.

CURRIE, J. The following issues are presented upon this appeal:

(1) Whether the facts alleged in the amended complaint present a justiciable controversy for declaratory relief within Wisconsin's Uniform Declaratory Judgments Act (sec. 269.56, Stats.).

(2) Whether the Authority is empowered to adopt its Resolution 513.

(3) Whether such resolution violates any of the provisions of the federal and state constitutions.

The defendants contend that the plaintiff tenants possess no vested right to continue to occupy the apartment in which they and their children reside in the Hillside Terrace Housing project, inasmuch as the Authority as landlord would possess the right to evict them for no reason whatsoever because of the expiration of plaintiffs' original lease. In other words, the position of the Authority is that it stands in the same category as any nongovernmental landlord, and is subject to no restrictions in choosing the persons it desires as tenants of its housing project, which would not be applicable to landlords generally, except only such as are specifically prescribed by sec. 66.402 (1), Stats.[1]

The defendants by their general demurrer have admitted the truth of the allegations of fact contained in the amended complaint. It appears from such allegations

[1]In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income.

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(c) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess of 5 times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with minor dependents such aggregate annual income may exceed 5 times the annual rental of the quarters to be furnished by $100 for each minor dependent or by an amount equal to the annual income of the minor dependents; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to the occupants, of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental. For the purposes of this subsection, a minor shall mean a person less than 21 years of age.

that the only reason the Authority seeks to evict the plaintiffs is because of their refusal to execute the requested certificate of non-membership in any of the listed organizations which have been designated as subversive by the Attorney General. We then have presented the issue of whether a governmental agency can deny to citizens a privilege, which lies within its discretion to grant or withhold, on the ground that such persons are members of an organization agitating for political or economic change, and, when such denial is challenged by court action, successfully defend on the ground that only a privilege and not a vested right is involved.

The First amendment to the United States constitution provides as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

While the due process clause of the Fourteenth amendment does not incorporate all of the provisions of the first ten amendments to the United States constitution so as to make the same applicable to state action,[2] the freedoms of the First amendment are among the liberties of the people protected against state interference or restriction by such due process clause.[3]

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[2] *Adamson v. California* (1947), 332 U. S. 46, 67 S. Ct. 1672, 91 L. Ed. 1903, 171 A. L. R. 1223; and see article, "Does the Fourteenth Amendment Incorporate the Bill of Rights?" by Professor Charles Fairman, 2 Stanford Law Rev. (1949), 5.

[3] *Gitlow v. New York* (1925), 268 U. S. 652, 666, 45 S. Ct. 625, 69 L. Ed. 1138; *De Jonge v. Oregon* (1937), 299 U. S. 353, 364, 57 S. Ct. 255, 81 L. Ed. 278; *Thomas v. Collins* (1945), 323 U. S. 516, 65 S. Ct. 315, 89 L. Ed. 430; *Saia v. New York* (1948), 334 U. S. 558, 68 S. Ct. 1148, 92 L. Ed. 1574; and *Burstyn v. Wilson* (1952), 343 U. S. 495, 72 S. Ct. 777, 96 L. Ed. 1098.

Secs. 3 and 4, art. I, of the Wisconsin constitution, guarantees the same freedom of speech and right of assembly and petition as do the First and Fourteenth amendments of the United States constitution. Necessarily included within such constitutionally guaranteed incidents of liberty is the right to exercise the same in union with others through membership in organizations seeking political or economic change.[4]

If the state, or one of its political subdivisions, were to pass a criminal statute or ordinance making it unlawful for a person to belong to any organization advocating political or economic change or reform, such enactment would at once be held unconstitutional as violative of the liberties of citizens guaranteed by the First and Fourteenth amendments of the United States constitution. The holding out of a privilege to citizens by an agency of government upon condition of non-membership in certain organizations is a more subtle way of encroaching upon constitutionally protected liberties than a direct criminal statute, but it may be equally violative of the constitution. Surely a citizen, to whom such a privilege is denied on the sole basis of membership in some organization, should be accorded the right to test the constitutionality of such a regulation in court. If a precedent should be established, that a governmental agency whose regulation is attacked by court action can successfully defend such an action on the ground that the plaintiff is being deprived thereby only of a privilege, and not of a vested right, there is extreme danger that the liberties of any minority group in our population, large or small,

[4] *American Steel Foundries v. Tri-City Council* (1921), 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189. See also concurring opinion by Mr. Justice Frankfurter in *Wieman v. Updegraff* (1952), 344 U. S. 183, 195, 73 S. Ct. 215, 97 L. Ed. 216.

might be swept away without the power of the courts to afford any protection.

The more that government engages in any activity formerly carried on by private enterprise, the more real is the peril. For example, the number of rental units for residence housing in the Authority's Hillside Terrace housing project constitutes a very small percentage of the total of all such units in Milwaukee, so that the number of people subjected to pressure by enforcement of Resolution 513 would constitute but a nominal percentage of the total population of the city. On the other hand, if the government, or an agency thereof, owned 90 per cent of all rental units available for private housing in the nation as a whole, or even in a particular municipality or state, the number of people subjected to pressure by such a plan, of requiring a certificate of non-membership as a condition of tenancy, would be very considerable. It is easy to foresee how those in the control of a government could use such a device to effectively undermine and render impotent any political party or other organization, which opposed their continued hold on the government, by simply labeling the same as "subversive", if the courts were powerless to provide a remedy.

In *Frost Trucking Co. v. R. R. Comm.* (1926), 271 U. S. 583, 593, 46 S. Ct. 605, 70 L. Ed. 1101, 47 A. L. R. 457, the United States supreme court rejected the defense of the defendant Railroad Commission that the plaintiff's cause of action was only concerned with a privilege, and not a vested right, and declared in stirring language:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under

the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold."

To similar effect is the following statement by the same court in *Hannegan v. Esquire, Inc.* (1946), 327 U. S. 146, 156, 66 S. Ct. 456, 90 L. Ed. 586:

> "But grave constitutional questions are immediately raised once it is said that the use of the mails is a privilege which may be extended or withheld on any grounds whatsoever. See the dissents of Mr. Justice Brandeis and Mr. Justice Holmes in *Milwaukee Publishing Co. v. Burleson,* 255 U. S. 407, 421-423, 430-432, 437-438. *Under that view the secondclass rate could be granted on condition that certain economic or political ideas not be disseminated.*" (Italics supplied.)

Even more apropos to the facts of the instant case is the following statement appearing in the concurring opinion of Mr. Justice Frankfurter in *American Communications Association v. Douds* (1950), 339 U. S. 382, 417, 70 S. Ct. 674, 94 L. Ed. 925:

> "This is so not because Congress in affording a facility can subject it to any condition it pleases. It cannot. Congress may withhold all sorts of facilities for a better life but if it affords them it cannot make them available in an obviously arbitrary way or exact surrender of freedoms unrelated to the purpose of the facilities."

The Illinois supreme court passed upon the identical issue herein raised by the defendant Authority in the case of *Chicago Housing Authority v. Blackman* (1954), 4 Ill. (2d) 319, 122 N. E. (2d) 522. In that case the Chicago Housing Authority operated public housing facilities financed by federal aid, and adopted a resolution

requiring its tenants to execute a certificate stating that the signer thereof swore that he is not "affiliated directly or indirectly with any communist organization or any communist front organization, or any foreign political agency, party, organization or government which advocates the overthrow of constitutional government by force or other means not permitted under the Constitution of the United States or the constitution of this State; that I do not directly or indirectly teach or advocate the overthrow of the government of the United States or of this State or any unlawful change in the form of the governments thereof by force or any unlawful means". The Chicago Housing Authority brought action to evict the defendant tenants for failure to subscribe such a certificate and secured a summary judgment ordering such eviction and the tenants appealed. The Chicago Housing Authority advanced the same argument on appeal as did the Authority in the case at bar, viz., that the tenants had no vested rights which would permit them to raise the issue of unconstitutionality. In rejecting such contention, the Illinois court declared (122 N. E. (2d) at p. 524):

> "Appellee insists that since it could evict in any event merely by giving notice, the fact that it assigned as a reason therefor appellants' refusal to subscribe to the oath is immaterial and does not raise any constitutional issue. *The argument, in other words, is that because the tenants have no legal right to occupy the housing accommodations, they cannot be deprived of any constitutional right by the requirements in question. The position is untenable.* * * * Even though appellants have no right to remain as tenants of appellee, they may not, as a condition of continued occupancy, be required to comply with unconstitutional requirements." (Emphasis supplied.)

Not only are there the strongest policy reasons for holding that plaintiffs' amended complaint states a justiciable controversy, but the foregoing cases provide the necessary precedents for such a conclusion. We, therefore, hold that the allegations of the amended complaint do state a justiciable controversy.

The first ground urged by plaintiffs for this court invalidating Resolution 513 adopted by the Authority, pursuant to which demand was made upon plaintiffs to execute the non-membership certificate, is that the Authority had no statutory or implied power to adopt such resolution.

The Housing Authority of the city of Milwaukee was created under, and exists solely by virtue of, the Wisconsin Housing Authorities Law comprising secs. 66.40 - 66.404, Wis. Stats. The defendant Authority contends that sec. 66.40 (21), Stats. specifically authorized it to comply with the Gwinn Amendment by adopting Resolution 513 with respect to the Hillside Terrace Housing project which was financed through federal aid. The Illinois supreme court in *Chicago Housing Authority v. Blackman, supra,* construed a provision of the Illinois Housing Authorities Act (ch. 67½ Illinois Revised Statutes) as not empowering the Chicago Housing Authority to require certificates of non-membership in subversive organizations as a condition to tenancy of housing projects financed with federal assistance. In its opinion in that case the Illinois court stated (122 N. E. (2d) at p. 526):

> "While appellee [Chicago Housing Authority] may voluntarily contract with an agency of the Federal government within the authority granted to it by the State, and may take action reasonably calculated to secure the financial aid of the Federal

> government, such action must have some relation to the statutory purpose. The purpose of the Illinois Housing Authorities Act is to eradicate slums and provide housing for persons of low-income class. See *Krause v. Peoria Housing Authority,* 370 Ill. 356, 373, 19 N. E. (2d) 193. It is evident that the exclusion of otherwise qualified persons solely because of membership in organizations designated as subversive by the Attorney General has no tendency whatever to further such purpose."

Some members of this court are inclined to disagree with the above stated conclusion of the Illinois court. However, even if we were to hold that the provisions of sec. 66.40 (21), Stats., authorized the Authority to adopt Resolution 513 pursuant to the demand of the Federal government that it do so in compliance with the Gwinn Amendment, the Authority would have no power to perform an unconstitutional act. This is because no governmental agency has any power to adopt an unconstitutional rule or procedure, even though it may have been specifically authorized by statute so to do. For this reason we consider the crux of the present controversy to be the issue of constitutionality.

The Gwinn Amendment became effective July 5, 1952, and provided in part as follows: "No housing unit constructed under this chapter, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General: *Provided further,* That the foregoing prohibition shall be enforced by the local housing authority, * * * " In order to understand the reference therein to organizations listed as *"subversive"* by the Attorney General it is necessary to resort to Executive Order no. 9835 (Tit. 5, sec. 631, U. S. C. A.; 12 Fed. Reg. 1935) promulgated by the president on March 21, 1947, as part of the Employees Loyalty Program in

the Executive Branch of the Government. Such executive order provided for the creation of a Loyalty Review Board, and paragraph 3 of Part III of the order read as follows:

> "The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination or persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or *subversive* or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." (Italics supplied.)

There is attached as an exhibit to plaintiffs' amended complaint a list of over two hundred organizations bearing the heading, "Consolidated List, dated November 10, 1952, of Organizations Designated by the Attorney General of the United States as within Executive Order no. 9835". A printed copy of such list was mailed by the Authority to the plaintiffs together with the certificate of non-membership at the time plaintiffs were requested by letter to subscribe such certificate. The certificate itself has reference only to non-membership in any organization listed on such list.

On April 27, 1953, Executive Order no. 9835 was superseded and repealed by Executive Order no. 10450 (Tit. 5, sec. 631, U. S. C. A.; 18 Fed. Reg. 2489), but sec. 12 of such new executive order requires the Department of Justice to "continue to furnish the information described in paragraph 3 of Part III of said Executive Order no. 9835, * * * but directly to the head of each department and agency". Executive Order no. 10450

by its terms became effective thirty days after its date. On May 5, 1953, the Attorney General, pursuant to authority vested in him by such order, prescribed certain rules of procedure "with respect to notice, hearing, and designation of organizations in connection with the Federal employee security program", which were published May 6, 1953, in 18 Fed. Reg. 2619. Under such rules any organization already designated by the Attorney General as subversive was given the right within ten days after the effective date of Executive Order no. 10450 (which was May 27, 1953) within which to file notice of contest of such designation and provision was made for a hearing. Such rules further provide for the Attorney General giving notice by registered mail to any organization which the Attorney General thereafter proposes to designate as subversive with an opportunity on the part of such organization to file notice of a contest of such proposed designation within ten days of receipt of such registered mail notice. If the notice so mailed is not delivered by the Post Office Department, then substituted notice is to be given by publication in the Federal Register, and the organization proposed to be designated as subversive is then given thirty days following such publication within which to file its notice of contest. Such organization is also given the right of a public hearing on such contest of proposed designation.

In addition to these procedural safeguards embodied in the aforedescribed published rules of the Attorney General, the decision of the United States supreme court in *Joint Anti-Fascist Refugee Committee v. McGrath* (1951), 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817, unequivocally holds that any organization, which has been designated by the Attorney General as subversive is entitled to court review of such designation.

Neither Executive Order no. 9835 nor no. 10450 defines the term *"subversive"* as employed therein. Webster's New International Dictionary (2d ed.) defines the verb "subvert" as "to overturn from the foundation; to overthrow; to ruin utterly; to destroy * * * "; and defines the adjective "subversive" as "tending to subvert; having a tendency to overthrow, upset or destroy". On the basis of these definitions, and keeping in mind the context in which such word appears in these executive orders, we deem that a subversive organization within the meaning thereof is one which advocates the overthrow of the government through force or other unconstitutional means.

While the plaintiffs contend that Resolution 513 and the Gwinn Amendment violate several provisions of the United States and state constitutions, we only find it necessary to consider the alleged violation of the First amendment to the United States constitution. If Resolution 513 violates such amendment it follows as a necessary corollary thereof that it also violates either sec. 3 or 4, art. I, of the Wisconsin constitution or both.

The briefs submitted on this appeal cite but three court decisions which have passed on the constitutionality of requiring tenants of federally aided public housing projects to execute certificates or oaths of non-membership in subversive organizations, as a condition of occupancy, and we have been unable to discover any others. Such three cases are *Chicago Housing Authority v. Blackman, supra; Peters v. New York City Housing Authority* (1954), 283 App. Div. 801, 128 N. Y. Sup. (2d) 712, which was reversed on other grounds by the New York Court of Appeals in *Peters v. New York City Housing Authority* (1954), 307 N.Y. 519, 121 N.E. (2d) 529; and *Rudder*

v. United States (Municipal Court of Appeals, District of Columbia, 1954), 105 Atl. (2d) 741.

The case of *Chicago Housing Authority v. Blackman, supra,* is readily distinguishable from the case at bar upon its facts. The certificate required of tenants by the Chicago Housing Authority did not require certification of non-membership in a particular list of organizations designated by the Attorney General as subversive, and contained no reference to such list, but instead in effect obligated the signer to certify that he was not a member in any subversive organization. The Illinois supreme court held this deprived tenants of due process of law because the requirement of such a certificate of non-membership did not distinguish between innocent and knowing membership in a subversive organization, and for that reason held it unconstitutional. The certificate required under Resolution 513 in the instant case does not offend in this respect because the non-membership referred to therein is specifically limited to a list of organizations designated by the Attorney General as subversive, which list is supplied to each tenant coincident to providing him with the certificate of non-membership he is requested to sign.

The court in *Peters v. New York City Housing Authority,* 283 App. Div. 801, 128 N. Y. Sup. (2d) 712, disposes of the issue relating to possible violation of the First amendment to the United States constitution by the following brief statement in its opinion (128 N. Y. Sup. at p. 714):

> "Furthermore, in the present day context of world crisis after crisis, it is our opinion that the danger the Congress is seeking to avoid (*i.e.,* infiltration of government housing by subversive elements) justifies the requirement that tenants herein choose be-

tween government housing and membership in an organization they know to have been found subversive by the Attorney General. *American Communications Ass'n. C. I. O. v. Douds,* 339 U. S. 382, 70 S. Ct. 674, 94 L. Ed. 925; Dennis v. United States, 341 U. S. 494, 71 S. Ct. 857, 95 L. Ed. 1137."

The constitutional issue is passed upon in *Rudder v. United States, supra,* in a single paragraph as follows (105 Atl. (2d) at p. 745):

> "In our opinion the Gwinn Amendment was an entirely reasonable exercise of the Congressional power. It reflects the wholly salutary view that since low-rent housing projects are subsidized by taxpayers' money, the special benefits thereof shall be available only to loyal tenants, and not to those who elect to join and support organizations whose purposes are inimical to the public welfare. This same view is expressed in the only appellate decision which has been called to our attention, or which we have been able to find. *Peters v. New York City Housing Authority,* 283 App. Div. 801, 128 N. Y. S. (2d) 712."

We cannot agree that the basis advanced in *Rudder v. United States, supra,* for upholding the constitutionality of the Gwinn Amendment is the same as advanced in *Peters v. New York City Housing Authority,* 283 App. Div. 801, 128 N. Y. S. (2d) 712. The New York court justified the resolution of the New York City Housing Authority adopted pursuant to the Gwinn Amendment on the theory of combating the *"danger"* posed by the threat of the infiltration of government housing by subversive elements. On the other hand, the district of Columbia court in *Rudder v. United States, supra,* seems to sustain the constitutionality of the Gwinn Amendment on the theory that public housing is a privilege which need be made available only to *"loyal tenants."*

The decision of the United States supreme court in *American Communications Association v. Douds* (1950), 339 U. S. 383, 70 S. Ct. 674, 94 L. Ed. 925, makes it clear that, if Resolution 513 of the defendant Authority is to be upheld against the charge that it invades freedoms guaranteed by the First amendment, it must be upon the basis of combating the threat of danger to the successful operation of public housing projects which might result from the infiltration of such housing facilities by tenants bent upon the overthrow of the government by force. In that case the court held constitutional the so-called "non-communist affidavit" provision of the National Labor Relations Act of 1947 (sec. 9 (h) of the Taft-Hartley Act).[5] We quote the following significant passages from the court's opinion in that case by Mr. Chief Justice Vinson (339 U. S. at pp. 399, 411):

> " * * * legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct, active conduct, are not presumptively bad because they interfere with and, in some of its manifestations, restrain the exercise of First Amendment rights. [citing cases] In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communists and others identified by sec. 9 (h) pose continuing threats to that public interest when in positions of union leadership. * * *
>
> "Considering the circumstances surrounding the problem — the deference due the congressional judgment concerning the need for regulation of conduct affecting interstate commerce and the effect of the statute upon rights of speech, assembly and belief —

[5] 61 Stats. 146, 29 U. S. C. A., sec. 159 (h) provides as follows:

we conclude that sec. 9 (h) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, does not unduly infringe freedoms protected by the First Amendment."

The court's opinion in the *Douds Case* refers to the oft cited *"clear and present danger"* test enunciated by Mr. Justice *Holmes in Schenck v. United States* (1919), 249 U. S. 47, 39 S. Ct. 247, 63 L. Ed. 470, and follows such reference thereto with this statement (339 U. S. at p. 397):

> "So far as the *Schenck Case* itself is concerned, imminent danger of any substantive evil that Congress may prevent justifies the restriction of speech. Since that time this Court has decided that however great the likelihood that a substantive evil will result, restrictions on speech and press cannot be sustained unless the evil itself is 'substantial' and 'relatively serious,' Brandeis, J., concurring in *Whitney v. California, supra,* at 374, 377, or sometimes 'extremely serious', *Bridges v. California,* 314 U. S. 252, 263 (1941). *And it follows therefrom that even harmful conduct cannot justify restrictions upon speech unless substantial interests of society are at stake.* But in suggesting that the substantive evil must be serious and substantial, it was never the intention of this

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"No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit *that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal unconstitutional methods."* (Italics supplied.)

Court to lay down an absolutist test measured in terms of danger to the Nation." (Emphasis supplied.)

When the opinion in the *Douds Case* is reviewed in its entirety, the gist of the holding thereof may be summarized as follows: Congress may impinge upon the freedoms guaranteed by the First amendment in order to prevent a substantial evil. No absolute test can be laid down in advance as to when such attempted abridgment by legislation of such freedoms is constitutional, and when not. This necessitates that whenever courts are called upon to pass upon the constitutionality of such type of legislation they weigh the substantiality of the evil sought to be prevented thereby against the harm that will result from the restriction imposed by such legislation upon freedom of speech and assembly. If the evil sought to be prevented is considered to be of sufficient substantiality to warrant the restriction, the legislation will be upheld as constitutional, otherwise not. In weighing the substantiality of the evil sought to be combated, considerable weight is to be accorded to any finding made by congress with respect thereto.

In his opinion in the *Douds Case,* Mr. Chief Justice Vinson emphasized the fact that when congress enacted the Labor Management Relations Act in 1947 it made an express finding to the effect that experience had demonstrated that certain types of concerted activities by labor organizations impaired the interest of the public in the free flow of commerce and needed to be eliminated. He also pointed out that substantial amounts of evidence had been presented to various congressional committees that communist leaders of labor unions had subordinated legitimate trade union objectives to obstructive strikes to carry out the dictates of Communist Party leaders, or in support of policies of a foreign government. The strike

called in 1941 at the Allis-Chalmers Manufacturing Company plant in Milwaukee, which was then engaged in producing vital materials for the national defense program, is cited as an example of the type of evidence presented at such committee hearings.

In marked contrast to the foregoing, there is a complete absence of any congressional finding, of any activity of subversive organizations which threatened the carrying out of federally aided housing projects, to support the enactment of the Gwinn Amendment, or of any evidence produced before congressional committees tending to establish the existence of such evil.[6] Counsel for the defendant Authority have failed to point out to this court how the occupation of any units of a federally aided housing project by tenants who may be members of a subversive organization threatens the successful operation of such housing projects.

It is beyond our power to comprehend how the evil which might result from leasing units in a federally aided housing project to tenants who are members of organizations designated subversive by the Attorney General is in any way comparable in substantiality to that which would result to the general welfare through communists in control of labor organizations disrupting commerce by calling strikes to carry out Communist Party policy. This court deems the possible harm which might result in suppressing the freedoms of the First amendment outweigh any threatened evil posed by the occupation by members of subversive organizations of units in federally aided housing projects. For this reason we must hold Resolu-

[6]See "Constitutionality of Denying Federal Housing to Members of Subversive Organizations", 53 Columbia Law Review (1953) 1166, 1170.

tion 513 adopted pursuant to the Gwinn Amendment to be unconstitutional and void.

By the Court. — Judgment reversed and cause remanded with directions to overrule the demurrer.

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City Attorney of the City of Milwaukee,
Attorney of Record for Petitioners,

ALAN H. STEINMETZ,
Assistant City Attorney,
Of Counsel,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No.

JOSEPH LAWSON, JR., and CORRINE LAWSON,

Respondents,

vs.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic, and CECIL A. FISHER, MRS. HENRY E. GUNDERSON, PETER T. SCHOEMANN, HAROLD HOLAND and J. MARTIN KLOTSCHE, individually and as Commissioners of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, and RICHARD W. E. PERRIN, individually and as Executive Director of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Wisconsin

The Housing Authority of the City of Milwaukee and the Commissioners and Executive Director thereof, petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin entered on June 1, 1955 (R. 24-44) overruling the demurrer of the petitioners to the amended complaint of plaintiffs in the court below.

Opinions Below

The opinions of the Circuit Court of Milwaukee County, Wisconsin (R. 15-19 and R. 20-22) are not reported. The opinion of the Supreme Court of the State of Wisconsin (R. 24-44) is reported at 270 Wis. 269, 70 N.W. (2d) 605.

Jurisdictional Statement

The judgment of the Supreme Court of the State of Wisconsin reversing the judgment of the Circuit Court of Milwaukee County, Wisconsin, and overruling the demurrer of petitioners to the amended complaint was entered on June 1, 1955 (R. 24-44). No petition for rehearing before the Supreme Court of the State of Wisconsin was filed for the reason that no new points of law or new authorities not considered by the Court were available for presentation upon rehearing. Under the decisions of the Wisconsin Supreme Court, therefore, it did not appear that petitioners were entitled to a rehearing.

Jacobs v. Queen Ins. Co. of America,
123 Wis. 608, at 612, 101 N.W. 1090;

Forecki v. Kohlberg, 237 Wis. 67, at 83,
295 N.W. 7;

Gospodar v. Milwaukee Automobile Ins. Co.,
249 Wis. 332, at 339b, 24 N.W. (2d) 676.

The jurisdiction of this Court is invoked under 28 *U.S.C.* 1257(3) on the ground that a right is specially set up and claimed under the Constitution of the United

States, First, Fifth and Fourteenth Amendments. The cases relied on to sustain the jurisdiction of this Court are:

Whitney v. People of the State of California, 274 U.S. 356;

State of Minnesota v. National Tea Company, 309 U.S. 551;

Richfield Oil Corporation v. State Board of Equalization, 329 U.S. 69;

Pope v. Atlantic Coast Line Railroad Company, 345 U.S. 379.

Respondents Joseph Lawson, Jr. and Corrine Lawson, his wife, commenced an action in the Circuit Court of Milwaukee County, Wisconsin, against the petitioners, the Housing Authority of the City of Milwaukee and the Commissioners and Executive Director thereof, for a declaratory judgment that a certain resolution 513 adopted by such Housing Authority requiring certificates of non-membership in subversive organizations to be executed by them as tenants of such Housing Authority is invalid and unconstitutional under the United States Constitution, as well as under the Constitution of the State of Wisconsin (R. 2-11). The petitioners appearing by their attorney, the City Attorney of the City of Milwaukee, interposed a demurrer to the first amended complaint that it appeared upon the face of the complaint that it did not state facts sufficient to constitute a cause of action (R. 15). By a decision dated December 30, 1953, the Circuit Court of Milwaukee County, Wisconsin sustained the demurrer of the petitioners to the first amended complaint on the ground that there was no allegation in said complaint that either of the respondents was a member of a proscribed organization (R. 15-19).

Upon grant of permission to plead over, the respondents served and filed an amended complaint dated January 18, 1954, alleging that the respondent Corrine Lawson is and was at all pertinent times " * * * a member of one of the organizations designated subversive by the Attorney General of the United States." (R. 20). Petitioners again demurred to the second amended complaint upon the ground that it appeared upon the face thereof that it does not state facts sufficient to constitute a cause of action (R. 20). By a decision dated October 7, 1954, the Circuit Court of Milwaukee County sustained the demurrer to the second amended complaint and, as a matter of law, determined that the requiring of such certificate of non-membership in proscribed subversive organizations was not violative of any constitutional inhibition and dismissed the complaint of the respondents without permission to further amend such pleading (R. 20-22). Judgment for petitioners based on such decision was entered in the Milwaukee County Circuit Court on October 20, 1954 (R. 23).

Upon appeal by respondents to the Supreme Court of the State of Wisconsin, the same questions of constitutionality were raised as were considered by the lower court. The Supreme Court of the State of Wisconsin in a decision dated June 1, 1955 (R. 24-44) reversed the judgment of the trial court and remanded the cause with directions to overrule the demurrer of petitioners on the ground that the requiring of such certificates of non-membership in proscribed organizations was unconstitutional and void under the provisions of the First Amendment of the United States Constitution.

The questions presented are substantial, as is more fully developed under the reasons for granting the writ (infra pages 11 to 16).

Questions Presented

The ultimate question is whether the Housing Authority of the City of Milwaukee, a public body corporate and politic organized and existing by virtue of the laws of the State of Wisconsin, as the owner of a low rent housing project in the City of Milwaukee, which project was constructed with federal financial assistance, may constitutionally require that its tenants in such project hold no memberships in any organizations listed as subversive by the Attorney General of the United States.

More specifically, the question presented is whether the guarantees of the Federal Constitution of free speech and assembly as found in the First Amendment and of due process as found in the Fifth and Fourteenth Amendments prohibit the enforcement by a local housing authority of a congressional enactment providing that no low rent housing units constructed under the Housing Act of 1937, as amended, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General.

Constitutional Provisions and Statutes Involved

Involved in this case are the following provisions of the Federal Constitution:

First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutes involved in this case are:

42 *U.S.C.,* Section 1411c:

"Subversives barred from occupancy of housing units; enforcement; prohibition as affecting Public Housing Administration.

"No housing unit constructed under this chapter, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General: *Provided further,* That the foregoing prohibition shall be enforced by the local housing authority, and that such prohibition shall not impair or affect the powers or obligations of the Public Housing Administration with respect to the making of loans and annual contributions under this chapter. July 5, 1952, c. 578, Title I, §101, 66 Stat. 403; July 31, 1953, c. 302, Title I, §101, 67 Stat. 307."

The above statute, which is popularly known as the "Gwinn Amendment," was originally enacted as part of Title I of the Independent Offices Appropriation Act, 1953 (Chapter 578, Public Law 455, Act of July 5, 1952, Title I, Section 101, 66 Stat. 403) in that portion thereof relating to Public Housing Administration, Housing and Home Finance Agency. Such provision was not repeated in the Independent Offices Appropriation Act, 1955, Act of June 24, 1954, Chapter 359, 68 Stats. 272.

Statement of the Case

The undisputed facts follow:

Respondents, husband and wife, together with three infant children, are lessees and occupants of an apartment in a federally aided low rent project, the Hillside Terrace Housing Project in the City of Milwaukee, administered by one of the petitioners, the Housing Authority of the City of Milwaukee. Such project was constructed with federal financial assistance under the Housing Act of 1937, as amended. 42 *U.S.C.* 1401 to 1435. The Housing Authority of the City of Milwaukee is a public body corporate and politic existing under and by virtue of Sections 66.40 to 66.404 of the Wisconsin Statutes, 1953. It administers, among other things, the subject housing project pursuant to such Wisconsin Statutes and in accordance with certain by-laws, regulations and resolutions adopted on behalf of the Authority by its Commissioners who are also petitioners in this case.

Section 1411c of the Housing Act of 1937, as amended (42 *U.S.C.* 1411c), formerly included as a proviso of the Independent Offices Appropriation Act of 1953, commonly known as the Gwinn Amendment, provides that no housing unit constructed with federal funds under

such Housing Act shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General.

On December 9, 1952, pursuant to the Gwinn Amendment, the Commissioners of the Housing Authority of the City of Milwaukee adopted Resolution 513 which provided for non-membership in any organization designated as subversive by the Attorney General of the United States as a condition of eligibility for continued occupancy for all tenants in low-rent housing units constructed under such Housing Act. The tenants were required to execute a certificate of non-membership in the listed organizations (R. 10). Resolution 513 also required the inclusion in tenants' leases of a rider containing a covenant against membership in such organizations and further required prompt eviction of families which included any member who was a member of such organization.

On July 6, 1953, respondents were informed by letter from the Housing Authority that they would be evicted if they did not comply with the requirement for the execution of such certificate. Received with the letter by the respondents was a copy of the certificate to be executed by them and a list of organizations designated by the Attorney General as subversive (R. 10-14). The respondent, Corrine Lawson, wife of Joseph Lawson, Jr., then was and is now a member of one of such organizations designated by the Attorney General as being subversive, the specific name of such organization not being revealed. They did not and could not execute such certificate therefore.

On July 23, 1953, the Housing Authority served upon the respondents a 30-day notice of termination of tenancy

as required under the landlord-tenant laws of the State of Wisconsin. On September 1 and 3, 1953, the respondents tendered rent to the Housing Authority for the premises occupied by them, but said rent was refused and returned to respondents, and they were notified by the Authority that it would not accept further rent. Respondents were reminded to vacate in accordance with the terms of the notice.

Before any action was commenced by the Housing Authority, as landlord, to evict the respondents as tenants, an action was commenced by the respondents, as tenants, in the Circuit Court of Milwaukee County, Wisconsin, for a declaratory judgment declaring the rights of the parties with reference to the requirement for the execution of such certificate of non-membership. The first amended complaint failed to allege that any one of the respondents was a member of any listed subversive organization. The demurrer of the petitioners to such amended complaint was upheld by a decision of the Milwaukee County Circuit Court (R. 15-19) on the ground that the Gwinn Amendment and Resolution 513 did not directly affect the legal interest of the respondents and that no justiciable question would appear, unless an express allegation were made in the complaint that one of the respondents was a member of an organization declared to be subversive by the Attorney General. Upon leave to plead over, respondents served and filed an amended complaint adding the allegation that respondent, Corrine Lawson, was and is at all times pertinent in this case a member of one of the organizations designated as subversive by the Attorney General of the United States without specifically naming such organization. A demurrer to this second amended complaint was interposed by the petitioners on the ground that upon the face of the

amended complaint it did not state facts sufficient to constitute a cause of action. By a decision dated October 7, 1954, (R. 20-22) the Circuit Court of Milwaukee County held that the demurrer to the second amended complaint must be sustained and decided, as a matter of law, that the action by the Housing Authority is valid and that the legislation upon which that action was based cannot be considered as violative of any constitutional inhibition. The Court further held that consideration of the contents of the second amended complaint impelled the further conclusion that judgment be entered in favor of petitioners and against respondents without prolonging the litigation by permission to amend further the pleading. Judgment in accordance with such decision in favor of petitioners was granted on October 20, 1954, in the Milwaukee County Circuit Court (R. 23).

Respondents appealed such decision to the Supreme Court of the State of Wisconsin contending that the requiring of such a certificate of non-membership in listed subversive organizations predicated on the Gwinn Amendment and Resolution 513 of the Housing Authority of the City of Milwaukee deprives respondents of their rights guaranteed to them under the free speech and assembly provisions of the First Amendment of the Federal Constitution and the due process requirements of the Fifth and Fourteenth Amendments of the United States Constitution (R. 7-10). By a decision dated June 1, 1955, the Wisconsin Supreme Court reversed the judgment of the Milwaukee County Circuit Court and remanded the cause to such Court with directions to overrule the demurrer (R. 24-44).

Reasons for Granting Writ

It is urged that the writ of certiorari to the Wisconsin Supreme Court be granted in this case for the reason that the decision of the Wisconsin Supreme Court is a federal question of substance not heretofore determined by this Court, as well as for the reason that such decision was decided in a way probably not in accord with applicable decisions of this Court.

1. The federal question of substance determined by the Wisconsin Supreme Court in this case is that the First Amendment of the Federal Constitution guaranteeing the rights of freedom of speech and assembly prohibit the enforcement by local housing authorities of that statute enacted by Congress commonly known as the Gwinn Amendment and found in 42*U.S.C., Section* 1411c, as part of the Housing Act of 1937, as amended. The decision of such Court was placed squarely upon the prohibitions of the First Amendment of the United States Constitution (R. 37-44). The Wisconsin Supreme Court acknowledged that Sections 3 and 4 of Article I of the Wisconsin Constitution guarantee the same freedom of speech and right of assembly and petition as does such First Amendment of the United States Constitution, but reached its decision that the Gwinn Amendment was unenforceable solely upon the grounds of the First Amendment to the Federal Constitution. A federal question, therefore, would be presented to this Court in a review of the decision of the Wisconsin Supreme Court. The question is one of substance, for the answer to it would determine whether Congress has the right to require that tenants in housing projects constructed with the aid of federal funds may be prohibited from being members in organizations listed as subversive by the Attorney General of the United

States. The power of Congress in the light of constitutional restriction, therefore, is basically the question involved in this case. This is a substantial question deserving of consideration and determination by this Court.

The Executive Branch of the United States Government as represented by the Public Housing Administration of the Housing and Home Finance Agency is in charge of the enforcement of the Gwinn Amendment to prevent members of subversive organizations from being supplied with federally-subsidized housing and is carrying out its program through local housing authorities constructing such housing projects in their areas of operation throughout the United States. The Housing Authority of the City of Milwaukee has entered into contracts with the Public Housing Administration that its tenants in low-rent housing projects constructed with the aid of federal funds must maintain non-membership in listed subversive organizations and certify thereto at stated intervals. Such contract under the decision of the Wisconsin Supreme Court in this case becomes completely unenforceable. The Housing Authority of the City of Milwaukee becomes unable to comply with the terms of its contract with the Federal Government to require such certificates of non-membership under this decision. Such contracts with any other local housing authorities in the State of Wisconsin, also, become unenforceable and impossible of compliance. Despite the decision of the Wisconsin Supreme Court, however, such contracts between the Federal Government and local housing authorities throughout the United States, exclusive of Wisconsin, are apparently capable of being complied with and enforced. The situation, therefore, exists that everywhere, except in the State of Wisconsin and any other local area where a court may have declared such contract invalid, non-

membership certificates will be required of tenants in such projects. Tenants in such areas outside of Wisconsin will be treated differently and subjected, according to the decision of the Wisconsin Supreme Court, to a deprivation of their rights under the First Amendment to the Federal Constitution.

In addition, grave difficulty will be encountered by the ~~Federal~~ Housing Administration in carrying out the provisions of the Housing Act of 1937. As far as housing authorities in Wisconsin are concerned, either the requirements of the Gwinn Amendment will have to be disregarded under the decision of the Wisconsin Supreme Court in this case, or local housing authorities in Wisconsin will be ineligible for further federal aid for the construction of such projects under such act. In either event Wisconsin housing authorities will necessarily be treated differently by the Executive Branch of the Federal Government. By an administrative decision of such executive departments, therefore, based upon the Wisconsin Supreme Court decision, there may be a determination that the Gwinn Amendment is invalid and unconstitutional in some parts of the United States but not in all parts. There will be a lack of uniformity in the administration of the Housing Act of 1937 under the Wisconsin decision in this case. A decision by this Court in review of the Wisconsin decision would clarify the validity of the Gwinn Amendment for all purposes throughout the entire nation. A decision of this Court would eliminate discrimination which might follow in the State of Wisconsin under the decision in this case.

In view of the fact that it is congressional legislation which is being interpreted in this case as unconstitutional, this decision is peculiarly appropriate for the exercise of this Court's discretionary jurisdiction. A serious ques-

tion of policy exists which requires final determination by this Court. Without review by this Court, the Wisconsin decision in this case will disrupt the orderly administration of the executive departments charged with the administration of the Housing Act of 1937. The significance of the decision of this Court in this case would be great and would be of recurring importance in the administration of such federal legislation in Wisconsin and elsewhere. To be uniform throughout the jurisdiction of Congress, a review by this Court becomes highly desirable.

The Gwinn Amendment is recent legislation, having first come into existence by congressional enactment on July 5, 1952, as a part of the Independent Offices Appropriation Act, 1953, 66 Stats. 403. It has now been enacted as permanent legislation (42 *U.S.C.*, Section 1411c). This Court has never had the opportunity of interpreting the validity of such legislation. Although several cases are in the process of litigation throughout courts in the United States, this decision of the Wisconsin Supreme Court is the first one which has been decided solely upon the grounds that the enforcement of the Gwinn Amendment results in a violation of the First Amendment of the Federal Constitution or any other provision thereof. A recent decision, July 21, 1955, of the United States Court of Appeals of the District of Columbia in the case of *Rudder v. United States* (an appeal from 105 A. (2d) 751, District Court of District of Columbia) has interpreted the Gwinn Amendment to be invalid and unenforceable in the District of Columbia. A decision by this Court in this case would settle as well the litigation involved in the *Rudder Case*.

2. The Wisconsin Supreme Court reached its determination that the action of the Housing Authority of the

City of Milwaukee, based upon the requirement of the Gwinn Amendment, was unconstitutional and invalid as a deprivation of the rights of freedom of speech and assembly under the First Amendment to the United States Constitution, basing its decision largely upon the decision of this Court in *American Communications Association v. Douds,* 339 U. S. 382. It is submitted that the Wisconsin Supreme Court's interpretation of the *Douds Case* is not in accord with the true meaning of such decision. The Wisconsin Supreme Court determined that since it had not been shown to it in this case that membership in listed subversive organizations by tenants in federally-aided low-rent housing projects would threaten the successful operation of such housing projects, that the elements in the *Douds Case,* upon which this Court determined that non-communist affidavits by the leaders of labor organizations were valid, are not applicable to sustain the validity of the Gwinn Amendment. It is submitted that such is not a correct interpretation of the holding of this Court in the *Douds Case.* It is the contention of the petitioners that the *Douds Case* is merely authority for the view that under the circumstances of that case the legislative requirement of non-communist affidavits by labor union leaders was valid. It cannot be assumed that in the absence of certain elements discussed in the opinions of this Court in the *Douds Case* that the certificates of non-membership required under the Gwinn Amendment are invalid. In each case the evils sought to be prevented must be weighed by the Court. Findings by Congress with respect to the substantiality of such evil are of importance, but their absence is not necessarily fatal. It is submitted that it is necessary for this Court to review the Gwinn Amendment and its requirements to determine the valid-

ity of requiring non-membership certificates by tenants in such housing projects.

It is suggested that since the majority opinion in the *Douds Case* is an expression of the views of only three members of the present composition of this Court that this Court may wish to review the Wisconsin Supreme Court decision in this case to provide an opportunity for all of the members of this Court to express themselves on the substantiality of the evil sought to be prevented by prohibiting members of subversive organizations from receiving governmental bounty and availing themselves of governmental privilege by residing as tenants in housing projects constructed with the aid of federal funds.

CONCLUSION

For the foregoing reasons it is respectively submitted that this petition for a writ of certiorari should be granted.

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August, 1955.

FILED
SEP 16 1955

Supreme Court of the United States

OCTOBER TERM, 1955

No. 354

JOSEPH LAWSON, JR. and CORRINE LAWSON,

Respondents,

vs.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic, and CECIL A. FISHER, MRS. HENRY E. GUNDERSON, PETER T. SCHUMANN, HAROLD HOLAND and J. MARTIN KLOTSCHE, individually and as Commissioners of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, and RICHARD W. E. PERRIN, individually and as Executive Director of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,

Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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Supreme Court of the United States

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vs.

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic, and CECIL A. FISHER, MRS. HENRY E. GUNDERSON, PETER T. SCHOEMANN, HAROLD HOLA[illegible]D and J. MARTIN KLOTSCHE, individually and as Commissioners of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE, and RICHARD W. E. PERRIN, individually and as Executive Director of the HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,

Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

Statement of Respondents

Respondents recognize the importance of the question presented by this case and agree with petitioner that it is fitting that this Court should review the same so as authoritatively to determine the validity of the statute involved, the Gwinn Amendment.

The petition herein notes that several cases are in process of litigation in various courts throughout the country and refers to one of them, *Rudder* v. *United States*, decided by the United States Court of Appeals for the District of Columbia on July 21, 1955 (Petition, p. 14).

The validity of the statute was also considered by the Supreme Court of Illinois in the case of *Chicago Housing Authority* v. *Blackman*, 4 Ill. 2d 319, 122 N. E. 2d 522.

Other cases which are in varying stages in the courts of other states about which counsel have been informed may be called to the Court's attention, since the tenants in those cases have raised the same issue of constitutionality.

NEW YORK

Peters v. *New York City Housing Authority*, 307 N. Y. 519, reversing 283 App. Div. 801, and remanding for trial of issues of fact. After retrial the law was held constitutional. An appeal is pending in the Appellate Division of the Supreme Court of the State of New York, Second Department.

Weixel v. *New York City Housing Authority*. In an action for declaratory judgment the statute was held constitutional. An appeal is pending in the Appellate Division of the Supreme Court, Second Department.

New York City Housing Authority v. *Sichel, et al.* Summary proceedings to evict 22 tenants; answers plead that the statute is unconstitutional. Trial has been set for September 19, 1955 in the Municipal Court of the City of New York, Borough of Brooklyn, First District.

Wheatley, et al. v. *Buffalo Municipal Housing Authority*. Action for declaratory judgment pending undetermined.

CALIFORNIA

Housing Authority of the City of Los Angeles, California v. *Cordove*. Action to evict tenants for failure to sign the Gwinn Amendment loyalty oath. The Appellate Department of the Superior Court, County of Los Angeles, State of California, held the statute was unconstitutional on January 19, 1955.

MARYLAND

Dupree v. *Baltimore City Housing Authority*. Action by tenant to restrain eviction for failure to sign Gwinn Amendment loyalty oath pending undetermined.

NEW JERSEY

Lawrence, et al. v. *Housing Authority of the City of Newark.* The Superior Court of New Jersey, Chancery Division, Essex County, enjoined eviction proceedings on March 18, 1955.

WASHINGTON

Dailey, et al. v. *Housing Authority of City of Seattle.* In an action by tenant to restrain eviction for failure to sign Gwinn Amendment loyalty oath. The Superior Court of the State of Washington held the statute constitutional. An appeal is now pending in the state Supreme Court.

Since the Wisconsin Supreme Court has decided the constitutional question not heretofore determined by this Court, and the same question is also involved in the other cases to which reference has been made, the importance of the question presented cannot be gainsaid. This Court should therefore review the same.

In taking this position, of course, respondents do not agree in any respect with the criticisms of the opinion of the Wisconsin Supreme Court contained in the petition. Respondents are firmly of the opinion that that decision was correct and should be expressly adopted by this Court.

Respectfully submitted,

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